

believe that in appropriate circumstances the public is served by assisting financially distressed telecommunications companies, especially small entities, by granting them relief or partial relief from Section 8 and Section 9 fees, and thereby assisting them in remaining effective competitors in the telecommunications marketplace. We also believe that bankruptcy generally represents sufficient evidence of financial hardship to warrant granting a waiver. Our concerns in this regard are distinct from those taken into account by a bankruptcy court in setting the respective priorities of various types of obligations and discounting them where appropriate.<sup>16</sup> Bankruptcy law does not limit our ability to forego collecting fees<sup>17</sup> where the public interest warrants, and we therefore act independently of the bankruptcy law to this extent. On the other hand, we continue to believe that very large waivers would excessively impair our ability to comply with our statutory fee collection responsibilities. Even under existing policy, we might decline a request for such a waiver on a case-by-case basis.

14. Additionally, we believe that a cap on waivers would be a useful means of implementing our policy concerns.<sup>18</sup> We adopt a cap of \$500,000 applicable both to bankrupt and other regulated asserting financial hardship, and we will amend the rules accordingly. We believe that granting fee waivers of greater than this amount would tend to have a negative impact on our ability to meet our statutory responsibilities. Fees owed above the cap would be subject to the provisions of the Bankruptcy Act in cases of bankruptcy. In other cases of asserted financial hardship, we may consider waiver, partial waiver, or deferral of fees above the cap on a case-

by-case basis. As noted in the *NPRM*, in computing the cap we will aggregate all subsidiaries and other affiliated entities of a particular regulatee. Additionally, in computing the cap we will aggregate the total Section 8 application fees and Section 9 regulatory fees for a given fiscal year, including Section 9 fees due in a fiscal year but paid prior to the due date. The cap will apply to all waiver requests pending as of the effective date of the new rule. Adoption of the fee waiver cap does not limit our ability to grant or deny any current pending waiver requests. We anticipate that we will revisit the amount of the cap in subsequent fee rulemakings as warranted by changing conditions. We may also give further consideration to Verizon's proposals if our further experience suggests that this would be desirable.

#### v. Procedural Changes and Future Streamlining of the Regulatory Fee Assessment and Collection Process

15. In our *NPRM*, we sought comment on a broad range of options for streamlining and otherwise improving the Commission's fee assessment and collection processes and procedures.<sup>19</sup> While no comments were received with specific regards to future streamlining efforts, the Industrial Telecommunications Association, Inc. ("ITA") objects to the Commission's proposal to discontinue its annual mailing of regulatory fee public notices to licensees. ITA states that small wireless and radio services providers, without adequate notification, may unintentionally miss the deadline for payment of fees.<sup>20</sup> In his reply comment, Kenneth J. Brown, a retired broadcast engineer, contends that the annual mailing of regulatory fee public notices is a waste of federal resources with regard to large radio station group owners.<sup>21</sup> Mr. Brown asserts that his former employer was able to obtain the public notice and payment information from the Commission's Internet site each year, long before public notice mailings for each of the employer's holdings arrived in the mail.<sup>22</sup>

16. In responding to ITA, we first note that the Commission's smallest regulatory fees—generally paid by smaller businesses and entities—are attached to Section 8 application fees and are paid upfront by entities at the

time of their initial application or renewal of their multi-year license. Also, because governmental and public safety entities are exempt from regulatory fees, it is not necessary to give notice to these entities. In addition, each year the Regulatory Fee Schedule is established in a *R&O* promulgated by the Commission. This *R&O*, along with our regulatory fee public notices, are published in the **Federal Register** as a means of providing official public notice.<sup>23</sup>

17. As in previous years, we will also continue to make our regulatory fee public notices available on the FCC's Web site (<http://www.fcc.gov/fees>). In our *NPRM*, we proposed no longer to disseminate public notices through surface mail because of the wide availability of the Internet.<sup>24</sup> We believe that today use of the Internet among the vast majority of businesses is ubiquitous and even those entities without computers or Internet access on their premises can still obtain the public notices via Internet access at their local public library. The Internet serves as the most convenient source for licensees to obtain regulatory fee information.

18. We also note that our initiative to mail regulatory fee assessment postcards to media services entities is underway, and that if this pilot program is successful we will consider expanding this method to other services.<sup>25</sup> We iterate that our broader interest is to move towards disseminating actual regulatory fee bills to entities. To do so, we may consider various methods in the future, including "e-billing" through the Internet.

19. For the reasons stated above, the Commission adopts its proposal no longer to disseminate regulatory fee public notices to the majority of its regulatees. An exception to this policy will be made for Interstate Telecommunication Service Providers ("ITSPs"), as the Commission will continue to generate and mail to them a customized Regulatory Fee Worksheet attached to the general regulatory fee public notice.

<sup>23</sup> Moreover, we will continue to mail public notices and other relevant materials free of charge to entities upon request.

<sup>24</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 13.

<sup>25</sup> For FY 2003, assessment postcards will be mailed to all media services entities (radio and television station licensees) with the exception of broadcast auxiliary station licensees. Entities receiving assessments will continue to pay their regulatory fees via the Commission's established procedures; i.e., payments must still be accompanied by FCC Form 159 and be submitted via the Commission's traditional methods for collection of regulatory fees each year.

<sup>16</sup> Verizon notes that in our *NPRM* we stated with respect to fees in excess of the proposed cap: "By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving due regard to our congressionally-mandated obligation to collect regulatory fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act." Verizon contends that we should treat all fees from companies in bankruptcy consistent with this approach. We believe, however, that smaller fees warrant a different public interest balancing than larger fees and that we should continue to grant waivers for smaller amounts.

<sup>17</sup> See 11 U.S.C. 501, 502(a), 726 (claims have priority only upon creditor's timely filing of a proof of claim).

<sup>18</sup> The fee waiver cap we adopt is intended to limit the circumstances in which financial hardship will be considered as a basis for granting a fee waiver. It does not affect the procedures for processing waiver requests.

<sup>19</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2003, Notice of Proposed Rulemaking*, 68 FR 17577, April 10, 2003, paragraph 16.

<sup>20</sup> Comments of the Industrial Telecommunications Association, Inc., page 4.

<sup>21</sup> Reply Comments of Kenneth J. Brown, page 1.

<sup>22</sup> Reply Comments of Kenneth J. Brown, page 1.